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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MALIBU MEDIA, LLC,

Plaintiff,

v.

STEVEN VASZLOVEK,

Defendant.

JURY TRIAL DEMANDED

Case No. 2:18-cv-13071-SRC-CLW

**MOTION FOR LEAVE TO FILE
SECOND AMENDED
COMPLAINT**

Plaintiff, Malibu Media, LLC, hereby moves this Court, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, for leave to file its Second Amended Complaint and states:

1. This is a copyright infringement case originally against a John Doe Defendant known to Plaintiff only by an IP address.
2. Plaintiff commenced this action against the internet subscriber assigned IP 69.114.252.126 (“Defendant”) on August 22, 2018, at which time it filed a

complaint alleging that Defendant copied and distributed one or more of Plaintiff's copyrighted works, all without Plaintiff's consent. *See CM/ECF 1.* Plaintiff asserted a claim for direct copyright infringement, and requested that Defendant delete and permanently remove, and be enjoined from continuing to infringe, Plaintiff's copyrighted works. *See Id.*

3. On September 26, 2018, Plaintiff was granted leave to serve a third party subpoena on Defendant's ISP to obtain the Defendant's identifying information [CM/ECF 5].

4. Upon receipt of the subscriber's identifying information, Plaintiff conducted an investigation and determined that there was sufficient evidence to conclude that the subscriber was the infringer.

5. On March 4, 2019, Plaintiff filed its Amended Complaint against the subscriber, Steven Vaszlovek [CM/ECF 9].

6. Subsequent to the filing of the Amended Complaint, Plaintiff has discovered that Defendant used a second IP address to download more of Plaintiff's works.

7. Plaintiff, therefore, seeks leave to file a Second Amended Complaint which sets forth allegations regarding use of a second IP Address to download Plaintiff's works. The Second Amended Complaint also provides updated Exhibits

A and B detailing the works downloaded, including additional infringed works downloaded by the second IP address after the filing of the Complaint.

8. Under Federal Rule of Civil Procedure 15(a)(1), a party may amend its complaint once as a matter of course 21 days after serving it or 21 days after a responsive pleading. Where, as here, a plaintiff has used its one "matter of course" amendment, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2).

9. Fed. R. Civ. P. 15(a) provides that leave to amend a pleading "shall be freely given when justice so requires."

10. Where a plaintiff has presented underlying facts or circumstances that may warrant relief, the plaintiff "ought to be afforded an opportunity to test his claim on the merits," and the Federal Rules require district courts to "freely grant" leave to amend unless the plaintiff's request to amend is made for an improper purpose.

See Foman v. Davis, 371 U.S. 178, 182 (1962) ("In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave [to amend] sought should, as the rules require, be 'freely given'").

11. Plaintiff's proposed Second Amended Complaint is attached hereto as Exhibit "A".

12. Defendant will not be prejudiced by the filing of a Second Amended Complaint because the Defendant has not yet been served.

13. Plaintiff attempted to serve Defendant and was unsuccessful. Therefore, Plaintiff sought to serve via alternate service, which relief was granted by the Court on May 23, 2019 [CM/ECF 19].

14. Therefore, Plaintiff respectfully requests that Plaintiff be allowed to serve the Second Amended Complaint on the Defendant via alternate service.

WHEREFORE, Plaintiff respectfully requests that the Court allow Plaintiff to file its Second Amended Complaint and service same on the Defendant via alternate service. A proposed order is attached for the Court's convenience.

Date: June 5, 2019

Respectfully submitted,

By: /s/ Patrick J. Cerillo
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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Patrick J. Cerillo